

RECEIPT NUMBER

518253

11

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

OPERATING ENGINEERS' LOCAL 324
FRINGE BENEFIT FUNDS and TRUSTEES
OF THE OPERATING ENGINEERS'
LOCAL 324 FRINGE BENEFIT FUNDS,

Plaintiffs,

Case No. **04-74859**

v.

Hon.

CHIE CONTRACTORS, INC., GERALD M. CHIE
and JAMES B. CHIE,

GERALD E. ROSEN

Defendants.

MAGISTRATE JUDGE R. STEVEN WHELEN

Jeffrey M. Lesser (P33298)
Attorney for Plaintiffs
39040 West Seven Mile Road
Livonia, Michigan 48152
(734) 464-3603

FILED
13 DA
DEC 13 2004

COMPLAINT

CLERK'S OFFICE, DETROIT-PSG
U.S. DISTRICT COURT

NOW COME Plaintiffs to complain against Defendants as follows:

PARTIES, JURISDICTION AND VENUE

1. Plaintiffs Operating Engineers' Local 324 Fringe Benefit Funds (the "Funds") are jointly-administered trust funds established pursuant to Section 302 of the Labor-Management Relations Act of 1947, as amended (hereinafter "L.M.R.A."), 29 U.S.C. §186, and are administered in Livonia, Wayne County, Michigan. The Funds consist of the Operating Engineers' Local 324 Health Care Plan, Operating Engineers' Local 324 Pension Fund, Operating Engineers' Local 324 Retiree Benefit Fund, Operating Engineers' Local 324 Vacation

and Holiday Fund, Operating Engineers' Local 324 Supplemental Vacation Fund, Operating Engineers' Local 324 Joint Apprenticeship Training and Journeyman Retraining Fund, Operating Engineers' Local 324 Industry Advancement Fund and Operating Engineers' Local 324 Labor-Management Education Committee and Operating Engineers' Local 324 Defined Contribution Plan.

2. The Funds are multiemployer employee benefit plans within the meaning of Section Three of the Employee Retirement Income Security Act of 1974, as amended (hereinafter "ERISA"), 29 U.S.C. §1002.

3. Plaintiff Trustees of the Funds, who reside in the State of Michigan, are officially designated and are by law invested with management and control of the Funds, in compliance with Section 302 of the L.M.R.A., 29 U.S.C. §186, and appear in this action as representatives of the participants and beneficiaries of the Funds.

4. Corporate Defendant Chic Contractors, Inc. is a Michigan corporation with a principal place of business in Milan, Michigan, which conducted business in this District.

5. Individual Defendant Gerald M. Chic resides in and/or conducts business in Milan, Michigan and has conducted business in this District.

6. Individual Defendant James B. Chic resides in and/or conducts business in Milan, Michigan and has conducted business in this District.

7. Defendants act in concert to breach the corporate Defendant's obligations to pay contributions to the Funds and to divert money paid to the corporate Defendant to be held in trust for the Funds. (The term "Defendant" will hereinafter refer to all Defendants unless otherwise specified.)

8. Defendant is, or was at all relevant times, in an industry affecting commerce within the meaning of Section Four of ERISA, 29 U.S.C. §1003.

9. Jurisdiction of this Court is predicated on Section 502 of ERISA, 29 U.S.C. §1132, this being a lawsuit to enforce provisions of multiemployer benefit plans representing employees in an industry affecting commerce.

10. Venue is proper in this District pursuant to Section 502(e)(2) of ERISA, 29 U.S.C. §1132(e)(2), as the Funds are administered, the breach took place and Defendant may be found in this District.

CLAIMS FOR DAMAGES AND INJUNCTIVE RELIEF

11. Plaintiffs reallege paragraphs 1-10 inclusive of this Complaint and incorporate the same herein by reference.

12. During all periods of time relevant to this action, the corporate Defendant has been party to a collective bargaining agreement (hereinafter individually and collectively referred to as the "collective bargaining agreement") with International Union of Operating Engineers, Local Union No. 324, 324-A, 324-B, 324-C and 324-D, AFL-CIO (the "Union"), a labor organization representing employees in an industry affecting commerce, relating to work performed in this District.

13. Pursuant to the collective bargaining agreement, Defendant agreed to make periodic payments to the Funds (hereinafter "contributions" or "fringe benefit contributions"), such payments representing withheld wages and fringe benefits earned by employees of Defendant for the benefit of those employees, for the purpose of funding the Defendant's employees' retirement benefits, medical coverage, vacation and holiday pay and other benefits of employment.

14. Pursuant to the collective bargaining agreement, Defendant agreed to pay contributions remitted with standard contribution forms by the fifteenth day of the month following the month in which hours were worked requiring such contributions.

15. Pursuant to the collective bargaining agreement, when such submission of payments and contribution forms described above is not made in a timely manner, Defendant agreed to pay liquidated damages at an eighteen percent annual rate of interest on contributions from dates contributions are required to be paid through the dates contributions are paid, as well as attorney's fees and costs incurred in enforcing the Defendant's obligations to the Funds.

16. Pursuant to the collective bargaining agreement, Defendant agreed to maintain accurate books and records of bargaining unit hours worked by its employees and to permit inspection and audit, at the discretion of the Funds, of all books and records necessary to determine whether Defendant was making all contributions required by the collective bargaining agreement, and to pay all unpaid contributions disclosed in an audit, plus liquidated damages if the audit determined delinquencies in contributions.

17. Defendant maintains known delinquencies to the Funds in the amount of at least \$384,866.65, consisting of \$298,527.87 in fringe benefit contributions arising from work performed from July 2000 through November 2004 and \$86,338.78 in liquidated damages on unpaid and untimely paid contributions, as disclosed in an audit of Defendant's records covering work performed from July 2000 through June 2004 that was billed to Defendant on November 22, 2004, and remittance reports Defendant submitted to the Funds covering work performed from July through November 2004.

19. Defendant's persistent flaunting of its contractual and statutory obligations to submit contribution reports and pay contributions in a timely manner constitutes willful dereliction of Defendant's obligations. Such dereliction has caused and will continue to cause irreparable injury to the participants and beneficiaries of the Funds, through jeopardizing their rights to benefits necessary to their health and well-being to which those beneficiaries are entitled.

20. The actions of Defendant described above threaten and continue to threaten the financial integrity of the Funds and impair their capacity to formulate funding standards, as well as cause the Funds to lose the monetary benefit of investment income which could be realized if Defendant's fringe benefit contributions were remitted in a timely fashion.

21. The actions of Defendant described above constitute actual threats of irreparable injury to the Funds and their participants and beneficiaries for which there is no adequate remedy at law, and public policy supports enjoining Defendant's activities.

22. The Funds have diligently requested Defendant to submit contribution reports and pay contributions in a timely manner and to otherwise comply with its obligations so as not to impair the rights of the Funds and their participants and beneficiaries, but Defendant continues to violate its contractual and statutory obligations to the detriment of the Funds and their participants and beneficiaries.

23. Under Section 502 of ERISA, 29 U.S.C. §1132, when the trustees of multiemployer fringe benefit funds obtain a judgment in favor of the funds in litigation to collect unpaid contributions, the court shall award the unpaid contributions, interest on the unpaid contributions, the greater of interest on unpaid contributions or liquidated damages provided for by the funds in an amount not to exceed twenty percent of the unpaid contributions, and

reasonable attorney's fees and costs of the action, as well as all legal or equitable relief as the Court deems appropriate.

24. Defendant may have engaged in a pattern of fraud to avoid paying required fringe benefit contributions to the Funds, and engaged in misconduct which includes converting money paid to Defendant for the purpose of paying fringe benefit contributions to the Funds, retaining money required to be held in trust under the Michigan Builders Trust Fund Act, M.C.L.A. §§570.151-53 for the benefit of Defendant's employees, withholding money from employee wages for transfer to the Funds but failing to do so, failing to submit monthly reports containing information about work performed by Defendant's employees and intentionally engaging in a scheme to deprive the Funds of money owing to them.

25. As officers, shareholders and persons who make decisions with respect to the corporate Defendant's compliance with its obligations to the Funds, special circumstances exist to dictate that the individual Defendants maintain responsibility for the corporate Defendant's compliance with its obligations to the Funds, on the basis that the individual Defendants with fraudulent intent improperly diverted money which the corporate Defendant and any other entity composing Defendant was required to hold in trust for payment of fringe benefit contributions to the Funds under the Michigan Builders Trust Fund Act, M.C.L.A. §§570.151-53, 29 C.F.R. §2510.3-102, ERISA and principles of equitable subrogation and constructive trusts, exclusive of other reasons which may independently dictate that the individual Defendants maintain responsibility for the corporate Defendant's compliance with its obligations to the Funds.

26. The individual Defendants are fiduciaries of the Funds as a result of their exercise of authority or control over unpaid fringe benefit contributions that constitute assets of the Funds. The individual Defendants breached their fiduciary duties to the Funds by electing to use money

authority and control over unpaid fringe benefit contributions that constitute assets of the Funds. The individual Defendants breached their fiduciary duties to the Funds by electing to use money within their authority and control for purposes other than paying required fringe benefit contributions to the Funds.

27. Each Defendant and any successor in interest to, alter ego of, or other entity affiliated with or operated by any Defendant, jointly and severally maintain obligations to:

A. Pay to the Funds the sum of \$384,866.65 in known indebtedness, plus all other contributions and liquidated damages determined to be owing, including those arising from work performed from July 2004 onward.

B. File timely and accurate contribution reports with the Funds, remit required fringe benefit contributions in a timely manner and otherwise ensure Defendant's compliance with its obligations to the Funds as set forth in any collective bargaining agreement of Defendant and any successor to any Defendant requiring payment of contributions to the Funds during all periods through the present and all periods in the future in which any Defendant or its successors are obligated to do so.

C. Pay the Funds all attorney's fees, audit fees and other costs incurred by the Funds in connection with pursuing Defendant's compliance with its obligations to the Funds in any manner, whether incurred before or after judgment, without separate application to the Court.

D. Pay the Funds interest on fringe benefit contributions determined to be owing from the dates they became or become due, the greater of liquidated damages or interest on unpaid fringe benefit contributions, interest on liquidated damages on untimely paid contributions determined to be owing from the dates assessed and interest on attorney's fees and

costs from the dates they are incurred by the Funds, with interest accrued at the eighteen percent annual rate used by the Funds in accordance with 29 U.S.C. §1132(g)(2)(B) and (C).

WHEREFORE, Plaintiffs pray for this Honorable Court to issue a judgment containing the following provisions:

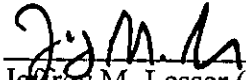
A. Commanding each Defendant and any successor in interest to or alter ego of each named Defendant to:

1. Pay to the Funds \$384,866.65 in known indebtedness, plus all other contributions and liquidated damages determined to be owing, including those arising from work performed from July 2004 onward.
2. File timely and accurate contribution reports with the Funds, remit required fringe benefit contributions in a timely manner and otherwise ensure Defendant's compliance with its obligations to the Funds as set forth in any collective bargaining agreement of any Defendant and any successor to Defendant requiring payment of contributions to the Funds during all periods through the present and all periods in the future in which any Defendant or its successors are obligated to do so.
3. Pay the Funds all attorney's fees, audit fees and other costs incurred by the Funds in connection with pursuing Defendant's compliance with its obligations to the Funds in any manner, whether incurred before or after judgment, without separate application to the Court.
4. Pay the Funds interest on fringe benefit contributions determined to be owing from the dates they became or become due, the greater of liquidated damages or interest on unpaid fringe benefit contributions, interest on liquidated damages on untimely paid contributions determined to be owing from the dates assessed and interest on attorney's fees and

B. Granting Plaintiffs in any supplementary proceeding to enforce a judgment in this action the opportunity to state a sum certain owing to include fringe benefit contributions, liquidated damages, interest, attorney's fees and other costs incurred up to the date of such supplementary proceeding, certified through signature of Plaintiffs' counsel without further application to the Court, subject to Defendant's right to request a hearing regarding any dispute.

C. Awarding Plaintiffs all other relief which the Court deems appropriate.

Respectfully submitted,



Jeffrey M. Lesser (P33298)
Attorney for Plaintiffs
39040 West Seven Mile Road
Livonia, Michigan 48152
(734) 464-3603

Dated: December 9, 2004

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JS 44
(REV. 3/99)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Operating Engineers' Local 324 Fringe Benefit Funds and
Trustees of the Operating Engineers Local 324 Fringe Benefit
Funds

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Wayne
(EXCEPT IN U.S. PLAINTIFF CASES)

26163

DEFENDANTS

Chie Contractors, Inc., Gerald M. Chie and James B. Chie

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
TRACT OF LAND INVOLVED

(C) ATTORNEYS (FIRM NAME, ADDRESS AND TELEPHONE NUMBER)

Jeffrey M. Lesser (P33298)
39040 West Seven Mile Road
Livonia, Michigan 48152
(734) 464-3603

ATTORNEYS (IF KNOWN)

Rosen/PSW
GERALD E. ROSEN

4859
MAGISTRATE JUDGE R. STEVEN WHALEN

II. BASIS OF JURISDICTION (PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (For Diversity Cases Only)

(PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- | | | | | | | | | | | | |
|---|----------------------------|----------------------------|----------------------------|----------------------------|----------------------------|---|----------------------------|----------------------------|----------------------------|----------------------------|----------------------------|
| P | T | F | D | E | F | P | T | F | D | E | F |
| <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of This State | | | | | | Incorporated or Principal Place of Business in This State | | | | | |
| <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen of Another State | | | | | | Incorporated and Principal Place of Business in Another State | | | | | |
| <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |
| Citizen or Subject of a Foreign Country | | | | | | Foreign Nation | | | | | |

IV. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury—Med. Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure Of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Equipment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence HABEAS CORPUS <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input checked="" type="checkbox"/> 791 Empl. Ret. Inc. Security Act	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DWC/DI/WW (405(a)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS — Third Party 26 USC 7609	

V. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Annual in District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

(CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.
DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

Section 502 of ERISA, 29 U.S.C. §1132 - enforcement of terms of multiemployer benefit plans representing employees in an industry affecting commerce.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION
☐ UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ YES ☒ NO

VIII. RELATED CASE(S) IF ANY

(See instructions)

JUDGE

DOCKET NUMBER

DATE

December 6, 2004

SIGNATURE OF ATTORNEY OF RECORD

J.M.L.

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

PURSUANT TO LOCAL RULE 83.11

1. Is this a case that has been previously dismissed?

☐ Yes
☒ No

If yes, give the following information:

Court: _____

Case No.: _____

Judge: _____

2. Other than stated above, are there any pending or previously discontinued or dismissed companion cases in this or any other court, including state court? (Companion cases are matters in which it appears substantially similar evidence will be offered or the same or related parties are present and the cases arise out of the same transaction or occurrence.)

☐ Yes
☒ No

If yes, give the following information:

Court: _____

Case No.: _____

Judge: _____

Notes : _____
